

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

In the Matter of

Civil Citation No. 06469

Robert Kent Nicholson
P. O Box 204
Phoenix, MD 21131

16502 Garfield Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on March 18, 2009, September 18, 2009, and October 21, 2009 for Hearings on a citation for violations of the Baltimore County Code (BCC) section 13-7-312 (a)(2), failure to remove all junk, trash and debris; Baltimore County Zoning Regulations (BCZR) section 102.1, 1A08.3A, Zoning Commissioner's Policy Manual (ZCPM), failure to remove shipping containers and office trailer; failure to comply with Hearing Officer's Order dated December 3, 2004 on residential property zoned RC 7 known as 16502 Garfield Road, 21111.

On January 12, 2009, pursuant to § 3-6-205, Baltimore County Code, Inspector Sophia Jennings issued a Code Enforcement citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$300,000.00 (three hundred thousand dollars).

On March 18, 2009 the following persons appeared for the Hearing and testified: Robert Kent Nicholson, Respondent and Robyn Clark, Baltimore County Code Enforcement Officer.

On September 18, 2009 and October 21, 2009 the followings persons appeared for the Hearing and testified: Robert Kent Nicholson, Respondent, represented by Douglas N. Silber, Esquire and Robyn Clark, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. This Citation is the most recent enforcement action in a long series of cases and disputes involving this residential property. Respondent has been constructing a new house on this rural property for approximately the last ten years, using innovative and recycled materials and creating some of his own designs and methods. He wants to live in the house with his family when it is completed. Testimony presented and a review of the file shows that there have been ongoing issues and code violations relating to the storage and accumulation of materials on the site; the long-term storage of freight shipping containers on the site; and the repeated lapse of building permits. A \$5,000.00 civil penalty and lien was imposed in 2006 for code violations.

B. This Citation charges Respondent with failure to remove all junk, trash and debris. Respondent maintains that the materials on the site are needed for his construction projects and explains that many are recycled from prior uses. This Citation charges Respondent with zoning violations for failure to remove shipping containers and an office trailer.

C. This Citation also charges Respondent with failure to comply with Hearing Officer's Order dated December 3, 2004. That Order, by Hearing Officer Wisnom, imposed a \$5,000.00 civil penalty for violation of County Code prohibitions against accumulation of junk and debris; and violation of zoning regulations for outside storage of untagged recreational vehicles, shipping containers, and an office trailer. The Order further provided for the \$5,000.00 penalty to be rescinded if the violations were corrected by February 1, 2005; the violations were not corrected, and the penalty was imposed by Baltimore County as noted above in paragraph A. This part of the current Citation will therefore be disregarded as the December 3, 2004 Order has already been enforced.

D. After much delay, the exterior construction of the house is nearly complete. The walls, roof, and windows are all installed. The rear wall is not completed because access for large equipment is still needed. At the March 2009 hearing, Respondent Nicholson agreed to construct a simple pole barn to store equipment and materials, and the enforcement of this Citation was held in abeyance pending submission of a compliance plan with proposed timelines. After investigation, Respondent Nicholson concluded that it was not possible for him to construct a satisfactory barn quickly at an affordable cost.

E. Further discussion between Respondent Nicholson, his attorney Douglas N. Silber, and County agency staff led to the submission of a proposed correction plan. By letter dated October 19, 2009, attorney Silber proposed that Respondent obtain a renewal of the house permit as an "Alteration to Complete" for one year; obtain a permit for the new barn; enclose the new house by June 2010; have interior framing, plumbing and electrical ready for rough-in inspection by August 2010; have house ready for final Use and Occupancy inspection by October 2010; and also requested relief from prior civil penalties and associated liens when violations are corrected. Attorney Silber noted that Respondent has every incentive to comply with this proposed schedule because upon receiving a use and occupancy permit, Respondent will be able to re-finance this property at a significantly lower rate, sell his current residence, and construct the desired barn.

F. At the Hearing on October 21, 2009, Inspector Robyn Clark testified that the Department does not object to the proposed correction plan, but requests three provisions be included. One, that the old car on the property either be removed or properly licensed and made operative; two, that the property be kept orderly with all materials properly stored; and three, that prior civil penalties not be rescinded.

G. At the October 21, 2009 hearing, attorney Silber also submitted correspondence signed by the five immediate neighbors of this property stating that they are aware of the home under construction, are aware of the construction materials and storage containers and office trailer on the site, and "[w]e have no complaint with the construction activities or the property."

H. Review of this longstanding case shows that Respondent is struggling to complete an ambitious project. The County's code enforcement actions are properly taken because Respondent's building permits have expired and the property conditions violate zoning and code requirements. However, Respondent has recently made substantial progress, with the exterior construction of the house nearly complete, and Respondent has proposed a correction plan that is reasonable and appears to be achievable. Respondent has not been able to renew his building permit because of the pending code enforcement action. The additional evidence that immediate neighbors are not disturbed by the conditions at this property is additional reason to allow Respondent to continue this project as proposed in his correction plan.

I. The proposed correction plan, however, does not include correction of all violations and lacks sufficient timeline milestones to ensure compliance and successful completion. A modified plan will be ordered below. In addition, Respondent is advised that under departmental policy, he is subject to immediate Citation with possible civil penalty for any repeated code violations such as improper accumulation of junk, trash and debris on the property or outside storage of untagged or inoperative motor vehicles. All construction materials must be properly staged and stored on the site, and no materials excess to current construction needs should be brought on to the site.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$10,000.00 (ten thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED according to the following timeline, and appropriate permits may be issued, if Respondent complies with this corrective plan:

1. By December 7, 2009, Respondent apply for renewal of house construction permit as an "Alteration to Complete" for one year duration
2. By December 7, 2009, Respondent remove automobile from property or make it operable with current tags

REDUCTION: if Respondent satisfies requirements 1-2 within the time provided, pending civil penalty reduced by \$3,000.00. If Respondent does not satisfy requirements 1-2 by December 7, 2009, \$3,000.00 of the civil penalty may be imposed.

3. Respondent complete exterior construction of house, with exterior walls complete and building weather-tight, by June 1, 2010
4. Respondent's licensed contractors apply for plumbing and electrical permits by June 1, 2010.

REDUCTION: if Respondent satisfies requirements 3-4 within the time provided, pending civil penalty reduced by \$5,000.00. If Respondent does not satisfy requirements 3-4 by June 1, 2010, \$5,000.00 of the civil penalty may be imposed.

5. Interior framing, plumbing and electrical (all by licensed plumbers and electricians pursuant to permits) ready for rough-in inspection by August 2, 2010
6. House passes final Use and Occupancy inspection by October 22, 2010

REDUCTION: if Respondent satisfies requirements 5-6 within the time provided, pending civil penalty reduced by \$2,000.00. If Respondent does not satisfy requirements 5-6 by the dates provided above, \$2,000.00 of the civil penalty may be imposed.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 19th day of November 2009.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.